

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES TERRELL JONES,

Defendant-Appellant.

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UNPUBLISHED

October 25, 2005

No. 256613

Wayne Circuit Court

LC No. 03-013861-01

Before: Kelly, P.J., and Meter and Davis, JJ.

PER CURIAM.

Defendant was convicted of two counts of armed robbery, MCL 750.529, one count of first-degree home invasion, MCL 750.110a(2), and one count of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to ten to fifteen years in prison for each of his two armed robbery convictions, twelve to twenty years in prison for his first-degree home invasion conviction, and two years in prison for his felony-firearm conviction. Defendant's armed robbery and first-degree home invasion sentences are to be served concurrently with each other but consecutively to his felony-firearm sentence. Defendant appeals his convictions and sentences as of right. We affirm defendant's convictions but remand this case with respect to defendant's first-degree home invasion sentence.

Defendant first argues that the trial court committed an error requiring reversal when it failed to instruct the jury that first-degree home invasion is a specific intent crime and that to be guilty of a crime as an aider and abettor, a defendant must have a specific intent to commit the crime or know that the principal has that intent. We conclude that this issue has been waived.

When defense counsel expresses satisfaction with the trial court's instructions to the jury, this approval constitutes a waiver that extinguishes any error regarding the instructions. *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000); *People v Hall (On Remand)*, 256 Mich App 674, 678-679; 671 NW2d 545 (2003). Here, defense counsel expressed satisfaction with the jury instructions, and, thus, this issue has been waived. *Carter*, *supra* at 216.<sup>1</sup>

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<sup>1</sup> Moreover, we reject defendant's vague argument that his attorney's expression of satisfaction with the jury instructions constituted an error requiring reversal even though it did not amount to  
(continued...)

Defendant next claims that he is entitled to be resentenced for his first-degree home invasion conviction, and the prosecutor agrees.

The sentencing guidelines apply to any enumerated felony committed on or after January 1, 1999. *People v Hendrick*, 472 Mich 555, 557; 697 NW2d 511 (2005); MCL 769.34(2). Under the sentencing guidelines act, a court must impose a sentence in accordance with the appropriate sentence range. *People v Hegwood*, 465 Mich 432, 438-439; 636 NW2d 127 (2001); MCL 769.34(2). A court may depart from the recommended sentence range if it states “substantial and compelling reasons” for the departure on the record. *People v Babcock*, 469 Mich 247, 255-256; 666 NW2d 231 (2003); MCL 769.34(3).

*People v Mack*, 265 Mich App 122; 695 NW2d 342 (2005),<sup>2</sup> construed MCL 777.14 to state that a presentence investigation report (PSIR) and accompanying sentence range need only be prepared for the highest crime class felony conviction when multiple concurrent convictions are at issue. *Mack*, *supra* at 126-128. Under *Mack*, therefore, the sentencing guidelines are not applicable to lower class concurrent convictions.<sup>3</sup> However, all sentences must still adhere to the principle of proportionality. See *id.* at 128-129.<sup>4</sup> In fact, the *Mack* panel questioned “whether a sentence for a conviction of the lesser class felony that is not scored under the guidelines . . . could permissibly exceed the sentence imposed on the highest crime class felony and remain proportional.” *Id.* at 129.

Armed Robbery is a “Class A” felony. MCL 777.16y. First-degree home invasion is a “Class B” felony. MCL 777.16f. Defendant’s armed robbery and first-degree home invasion convictions and sentences are to be served concurrently. Thus, the trial court did not err when it failed to calculate a sentencing guidelines range for defendant’s first-degree home invasion

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(...continued)

true “ineffective assistance of counsel.” Indeed, we disagree with defendant that he likely would not have been convicted had his attorney objected to the allegedly faulty instructions.

<sup>2</sup> In *Mack*, *supra* at 123, the defendant was convicted of third-degree criminal sexual conduct and assault with intent to commit criminal sexual conduct involving sexual penetration (AWICSC). After the defendant was convicted, the probation department prepared a PSIR and calculated a sentencing guidelines range for the defendant’s third-degree criminal sexual conduct conviction. *Id.* at 124. A PSIR was not prepared nor was a sentencing guidelines range calculated for the defendant’s conviction of AWICSC, a lower class felony. See *id.* The defendant was sentenced to equal concurrent sentences for both of his convictions. *Id.* at 123-124. The defendant filed a motion for resentencing “asserting that the trial court erred by failing to separately score [his] AWICSC conviction and by sentencing defendant outside the guidelines range that would apply to defendant’s AWICSC conviction.” *Id.* at 124-125. This Court affirmed the defendant’s sentences, holding that a probation department need not prepare a PSIR and the court need not calculate a sentencing guidelines range for a defendant’s lower class felony conviction when the defendant’s higher and lower class convictions are to be sentenced concurrently. *Mack*, *supra* at 126-128.

<sup>3</sup> We note that the pertinent holding from *Mack* was called into question by Judge Sawyer in *People v Johnigan*, 265 Mich App 463, 470-471; 696 NW2d 724 (2005).

<sup>4</sup> A sentence must be proportionate to the seriousness of the crime and the defendant’s prior record. *Babcock*, *supra* at 254.

conviction. *Mack, supra* at 126-128. However, defendant's first-degree home invasion sentence must still adhere to the principle of proportionality. *Id.* at 128-129. Given that defendant's minimum sentence for the "Class B" home invasion conviction exceeds his minimum sentence for his "Class A" robbery conviction, it is possible that defendant's home invasion sentence is not proportional. *Id.* at 129. Because the trial court failed to state on the record any of its reasons for sentencing defendant to a minimum sentence of twelve years for his first-degree home invasion conviction, and because the prosecutor agrees with the remedy of resentencing, we remand this case for resentencing.<sup>5</sup>

We affirm defendant's convictions but remand for resentencing with regard to defendant's first-degree home invasion conviction. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly  
/s/ Patrick M. Meter  
/s/ Alton T. Davis

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<sup>5</sup> We express no opinion regarding whether the twelve-year minimum sentence for the home invasion is appropriate under the specific circumstances of this case. However, should the court choose to impose the identical sentence on remand, it must provide proper reasons for doing so and ensure that the principle of proportionality has been satisfied.